

Board Opinion Relating to the Use of KASPER Reports

LEGAL AUTHORITY

This is a Board opinion issued pursuant to the Board's statute, KRS 311.602, to assist licensees in determining what actions would constitute unacceptable conduct under the provisions of KRS 311.595. The Board has decided to publish this opinion because it addresses issues of significant public and medical interest.

This opinion is not a statute or regulation, and does not have the force of law.

STANDARDS OF ACCEPTABLE AND PREVAILING MEDICAL PRACTICE RELATING TO A PHYSICIAN'S USE OF KASPER REPORTS

The Board has determined that the following principles constitute the standards of acceptable and prevailing medical practice relating to a physician's use of KASPER reports.

The statute governing the use of KASPER reports, KRS 218A.202, makes it a Class D felony to obtain KASPER reports for an unauthorized reason or to release those reports to persons who are not authorized by statute to receive them. At the same time, the Opinion Regarding for the Use of Controlled Substances in Pain Treatment, adopted by the Board of Medical Licensure, provides, in part, "Utilizing the Kentucky All Schedule Prescription Electronic Reporting [i.e. the **KASPER Report**] initially can also aid in documenting the patient's history of drug utilization...The physician should monitor patient compliance in medication usage and related treatment plans. Periodic requests for a **KASPER Report** could be utilized... Initial or periodic **KASPER Report(s)** should *not* be part of the patient's records and should not be released to the patient or a third party."

The Board offers the following guidance regarding the appropriate use and storage of KASPER Reports:

Lawfully Obtaining a KASPER Report

1. The only legally authorized reason a physician may obtain a KASPER report is "for the purpose of providing medical treatment to a bona fide current patient."
2. These terms are given their normal everyday meaning. "For the purpose of providing medical treatment" is broad enough to include professional decisions as to what medications to prescribe, whether to continue previous prescriptions and whether a patient is properly taking prescribed medications. This term also includes the professional determination of what medications a new patient is currently taking.
3. All existing patients are considered "bona fide current patients." In addition, a person is considered a "bona fide current patient" if they have made an appointment for treatment. Therefore, a physician may obtain a KASPER

report for use during the initial patient encounter, to determine what medications the new patient is taking and whether to continue current medications and/or to prescribe new or additional medications.

4. However, both conditions must be present for a physician to lawfully obtain a KASPER report – it must be for the purposes of treatment and the treatment must be for a bona fide current patient. A physician MAY NOT lawfully obtain a KASPER report for personal reasons even if it involves a bona fide current patient. Similarly, a physician MAY NOT lawfully obtain a KASPER report even if it is for treatment if the treatment is for someone other than a bona fide current patient. Physicians have been prosecuted for obtaining KASPER reports for their personal use or for the use of friends or associates.
5. A physician MAY NOT legally obtain a KASPER report to assist them in responding to an investigation by the Board or by law enforcement agents. This is true even though the investigation may involve bona fide current patients. Obtaining a KASPER report for such purposes is a felony and physicians have been prosecuted criminally for such.
6. If a physician is faced with defending a disciplinary action by the Board or a criminal prosecution, and the KASPER information is an essential part of the Board's case or the prosecution's case, the physician may seek a court order to obtain a copy of the relevant KASPER report for use in their defense. In such circumstances, the Board will enter into a standard Agreed Order to assist the physician in obtaining a court order authorizing the physician to obtain a copy of the KASPER report.

Release of a KASPER Report

1. The patient, or his/her attorney, is NOT entitled to a copy of the report. See KRS 218A.202(6).
2. Unauthorized disclosure is a felony. KRS 218A.202(10).
3. If relevant to treatment decisions, the physician may discuss relevant information from the KASPER report with a patient (i.e., evidence of "doctor shopping" or inappropriate use of prescriptions). However, the physician may not lawfully provide a copy of the KASPER report to the patient. If the physician considers it essential to provide the patient with written proof of the information, the physician should obtain a copy of the actual prescription from the dispensing pharmacy. It is not illegal to provide a copy of the actual prescription to a patient.
4. Physicians should utilize this report for their own purposes, such as compliance with the Guidelines, but should not share (give a copy of) the report outside their practice, i.e. they may share with other practitioners within the same group/practice when all utilize the same patient chart but should not share with a practitioner or pharmacist outside the group;
5. Physicians may discuss information from the report with other practitioners (outside their group) or pharmacists. However, if one of them wants a copy, that person should obtain their own copy. (Every practitioner or pharmacist who treats a patient is entitled to request a KASPER report.) This protects the physician against issues of unauthorized disclosure;

6. If anyone submits a grievance to the Board of Medical Licensure claiming that a physician is prescribing controlled substances in an inappropriate or excessive manner, the Board's investigators and/or consultants will attempt to determine, through a review of the patient records and available KASPER reports, whether the physician properly utilized controlled substances in the treatment of each patient;
7. In order to protect against an unauthorized disclosure, while maintaining the necessary records for patient care and/or Board review, the physician should consider one of the following methods for maintaining the KASPER report(s):
 - a. filing it separately from the chart;
 - b. filing it in a segregated section of the chart that is marked "Not to be Released"; or,
 - c. noting the number of the KASPER report and then properly destroying the report. If necessary, the Cabinet can use the report number to recreate the report at any time in the future.
8. If the physician retains the KASPER report and the report becomes relevant to a Board or law enforcement investigation, the physician may provide the report to: a) a Board investigator upon written confirmation by the investigator that the physician is the subject of a "bona fide specific investigation" or, b) a law enforcement agent upon written confirmation by the agent that they are engaged in "a bona fide specific investigation involving a designated person."

Professional Use of KASPER Report

1. The physician should document in each patient's record each occasion when a KASPER report is obtained and used as part of the patient's treatment.
2. If "red flags" for diversion and/or abuse of controlled substances are identified during a review of any KASPER report, those "red flags" should be identified in the patient record as part of the KASPER review. The patient record should also include: a summary of the physician's discussion of those issues with the patient and the patient's response; the physician's determination whether the "red flags" indicate abuse and/or diversion and, if so, the physician's response to that information, i.e. an admonition, increased scrutiny by KASPER review, execution of a controlled substances contract, modification or cessation of the controlled substances prescribing, termination of the physician-patient relationship, or no action, along with a brief explanation for that course of conduct. The appropriate course of action is a matter of professional judgment, subject to review.
3. If the physician chooses to continue providing controlled substances to the patient after "red flags" are identified through a KASPER review, subsequent KASPER reviews should reference the previous note(s) and should include relevant details about later reviews and the physician's response to those reviews.

Adopted: March 2009